IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1797 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMRELI CEMENT INDUSTRIES PVT. LTD.

Versus

GUJARAT STATE FINANCE CORPORATION

Appearance:

1. Civil Revision Application No. 1797 of 1996

MR PJ KANABAR for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 27/09/2001

ORAL JUDGEMENT

1. The petitioner unit borrowed a term loan in 1984 from Gujarat State Financial Corporation, respondent No.1 herein. It is not in dispute that the petitioner

defaulted in paying back the loan and according to the learned Counsel for respondent No.1, as on 1st August, 1997, the arrears amounted to about Rs.43 lacs. However, before the Corporation could take any action under Section 29 of the Act, the petitioner filed a suit on 29-9-1996 in the Court of Civil Judge (S.D.), Amreli (Civil Suit No.211/1996) for injunction to restrain the Corporation from taking any action against their unit. They also filed an application for temporary injunction, in which the learned Trial Judge issued notice returnable on September 30, 1996. The learned Judge, thereafter, heard both the parties, and after referring to the previous suit filed in 1994 in which the petitioner had failed to obtain temporary injunction found against the petitioner on the issues of prima facie case, balance of convenience and irreparable loss. He, therefore, dismissed the application on 30-9-1996.

2. The petitioner immediately filed an appeal in the District Court on 1-10-1996, challenging the order of the Trial Court. In the said appeal, he also filed application Ex.5 for injunction to restrain the Corporation from taking any further action against their unit. During the pendency of the appeal, the learned Assistant Judge, Amreli, however, by an order dated 9-10-1996 rejected the said application after hearing both the parties.

3. The petitioner has, therefore, filed this revision application under Section 115 of the Civil Procedure Code, challenging the said order of the learned Assistant Judge, Amreli rejecting their application for temporary injunction during the pendency of the appeal.

4. The learned Assistant Judge, while rejecting the the application for interim injunction, has observed that it was not in dispute that the possession of the petitioner unit has already been taken and the factory has been sealed by respondent Corporation and interim order in the form of mandatory injunction, directing the Corporation to remove seal could not be passed at that stage. The learned Counsel for the petitioner submits that this Court, while admitting the petition, had ordered the statu-quo to be maintained and directed the respondents not to part with possession of the unit until further orders, and the Corporation was permitted to complete all the formalities in response to advertisement published on 7-1-1997, except finalisation of sale. He submits that this interim relief deserves to be continued during the pendency of the appeal before the District Court. He also relied on the decision of this Court in

the case of "Bhanubhai Mohanbhai Bhatt and Another v. M/s.Vinayak Developers, Bhuj" reported in 1996(1) GLH UJ 28, in support of his contention. He also submits that the learned Appellate Judge has erred in appreciating the ratio of various authorities which, according to him, are very relevant.

5. However, the fact remains that the trial Court had not granted any interim relief ex-parte and after considering submissions on behalf of both the parties, dismissed the application for temporary injunction and hence when the application was filed before the Appellate Court there was no interim relief in favour of the petitioner which required to be continued. The possession had already been taken over by the Corporation. In the circumstances, the learned Assistant Judge was justified in refusing the prayer for temporary injunction during the pendency of the appeal. In my opinion, the appellate Court cannot be said to have committed any illegality or material irregularity in exercise of its jurisdiction, which will justify interference by this Court in revision. The Revision Application is, therefore, dismissed. The learned Counsel for the petitioner prays for extension of interim relief. The prayer is rejected. Interim relief stands vacated. Rule discharged. No order as to costs.

27-9-2001 (M. C. Patel, J.)

vinod